

DECISION



24296
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-210599

DATE: February 17, 1983

MATTER OF: Pine Street Corp.

DIGEST:

The Miller Act as amended, 40 U.S.C. 270a, does not preclude the General Services Administration from requiring bid guarantees in connection with bids for construction contracts under \$25,000.

Pine Street Corp. protests an amendment to General Services Administration solicitation number GS-11B-32019 (a solicitation for construction) that changed the requirement that bidders furnish a bid guarantee (bid bond) with bids exceeding \$25,000 to the requirement that a bid guarantee be furnished with bids exceeding \$10,000. Pine Street complains that the amendment is contrary to the Miller Act as amended, 40 U.S.C. 270a (Supp. IV 1980). The protest is summarily denied.

A bid bond is a creature of the procurement regulations; it is not a bond that is mandated by statute. The Miller Act amendment raised the dollar threshold for the requirement that performance and payment bonds be furnished from \$2,000 to \$25,000. The amendment did not alter the contracting officer's authority to require these bonds for bids below \$25,000. See Elevator Sales & Service, Inc., B-193519, February 13, 1979, 79-1 CPD 102. Similarly, the Federal Procurement Regulations (FPR), § 1-10.104 and § 1-10.105, require the use of performance and payment bonds in connection with any construction contract exceeding \$25,000. The FPR does not prohibit their use in smaller construction contracts.

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B-210599

With respect to bid bonds, the FPR states only that the "use of a bid guarantee is required when a performance bond or a performance and payment bond is required." Compare Defense Acquisition Regulation § 10-102.2. The solicitation requires such bonds to be furnished. Thus, the amendment is not contrary to the Miller Act.

The protest is denied.

Milton J. Forster
for Comptroller General
of the United States